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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,557	02/28/2002	Samuel W. Ho	UHGK:159US	5091

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FULBRIGHT & JAWORSKI L.L.P.
600 CONGRESS AVE.
SUITE 2400
AUSTIN, TX 78701

EXAMINER	
LE, LINH GIANG	
ART UNIT	**PAPER NUMBER**
3626	
MAIL DATE	**DELIVERY MODE**
07/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/086,557	HO, SAMUEL W.	
	Examiner	Art Unit	
	Michelle Linh-Giang Le	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 April 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-61* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-61* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Notice to Applicant

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05 April 2007 has been entered. Claims 1-55 have not been amended. Claims 56-61 have been added.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-55 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Lockwood (5,706,441) in view of Pack-Harris (6,195,612) for the same reasons as the Office Action dated 13 March 2006.

4. As per claim 56, Lockwood teaches:

providing a listing of a plurality of health care providers to a health-care consumer (Lockwood; Col. 5, lines 45-50);

providing a plurality of measures (Lockwood; Col. 6, line 52 to Col. 7, line 25),

providing a score for each of the plurality of measures (Lockwood; Col. 10, line 62 to Col. 11, line 11); and

selecting at least one health care provider from the listing based on the provided score by the health-care consumer (Lockwood; Col. 1, lines 28-40).

Lockwood does not expressly teach: the measures indicating medication prescribing practices of each health-care provider of the listing and the score indicating a frequency and dose level for each measure in the plurality of measures.

However these features are well known in the art as evidenced by by Pack-Harris. In particular, Pack-Harris teaches a system enabled to monitor prescription utilization information (Pack-Harris; Col. 2, lines 39-45). Examiner interprets the level of dosing of a medication as part of prescription utilization information. It would have been obvious to add the prescription utilization feature of Pack-Harris to the Lockwood quality-rating tool with the motivation of providing information regarding the drugs obtained and their actual costs (Pack-Harris; Col. 2, lines 18-22) and also to assess the cost-efficiency of health-care providers in a network (Lockwood; Col. 13, lines 31-41).

5. Claims 57-61 repeat the limitations of claims 3, 24 and 25 and the reasons for rejection are incorporated herein from the 3/13/06 Office Action.

Response to Arguments

6. Applicant's arguments filed 05 April 2007 have been fully considered but they are not persuasive.

(A) Applicant argues on pg. 12 of the 4/5/2007 Remarks that the cited references fail to teach or suggest every element recited in independent claims 1, 10, 19, 23, 26, 27, 32, 48 and 52. In particular, Applicant argues that the cited references fail to teach the limitation: "wherein the quality rating tool is used to select one entity for providing health care services to a health care consumer." Examiner disagrees.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies are not recited in the rejected claim(s). As stated in the 11/3/06 Response to Applicant, the claimed invention does not specify *who* uses the quality rating tool to select the health care providing entity. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Claim 1 simply requires that a quality rating tool is used to select an entity for providing health care services to a health care consumer. The "wherein" clause is not an active step in the claim and is not related to the "level of dosing of medication" feature. The limitation as claimed also does not limit *who* makes the selection based on the quality rating tool. Thus, Examiner maintains that Lockwood discloses "wherein the quality rating tool is used to select one entity for providing health care services to a consumer."

(B) Applicant next argues on pg. 13 of the 4/5/07 Remarks that the cited references fail to teach or suggest every element recited in independent claims 28, 29, 30, 31, 51, 53, 54, and 55. In particular, Applicant argues the cited references do not teach "calculating a score for a measure from the plurality of measures using data from the plurality of sources wherein the measures include a safe dosing of a medication measure." Examiner disagrees.

Again, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As claimed, Lockwood in view Pack-Harris adequately teach the feature of "Calculating a score... wherein the measures include a safe dosing of a medication measure."

Lockwood teaches the feature of "calculating a score..." Lockwood (Col. 10, line 62 to Col. 11 line 11) teaches conducting a severity adjustment analysis to score the complexity of a sickness episode in the records. Lockwood does not expressly teach wherein the measures include a safe dosing of medication. However this features is well known in the art as evidenced by Pack-Harris. Again, the "wherein" is not an active step and is not related to the "calculating a score..." step. Furthermore, Examiner notes that as claimed the invention only requires the measures *include* a safe dosing of a medication measure but does not limit that to be the only measure.

(C) Applicant finally argues on pg. 14 of the 4/5/07 Remarks that there is no motivation to combine or modify the cited references. Examiner disagrees.

Examiner maintains there is sufficient motivation to combine the teachings of the Lockwood and Pack-Harris references. Lockwood, Col. 3, lines 52-67 teaches in order to determine the complexity of a case it is important to know as much information as possible about the patient was treated. One of ordinary skill in the art would understand drug and prescription information to be part of the information needed to analyze a patient's treatment. One of ordinary skill in the art would also appreciate that drug and information to be pertinent information in determining the cost-efficiency of a procedure. Therefore, Examiner maintains there is sufficient motivation to suggest the desirability of the combination.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Linh-Giang Le whose telephone number is 571-272-8207. The examiner can normally be reached on 8 AM - 5PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-3600. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LLe

ROBERT W. MORGAN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600